

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
Request for Review or Waiver)	
of the Decision of the)	
Universal Service Administrator by)	
)	
Virgin Islands Department of Education)	CC Docket No: 02-6
St. Thomas, VI)	
)	
)	File No. SLD- 927508 and 990686
Schools and Libraries Universal Service)	
Support Mechanism)	

The Virgin Islands Department of Education (VIDOE) hereby appeals USAC's Decisions on Appeal in the above-captioned matter dated January 28, 2015.¹ VIDOE respectfully requests that the Commission reverse USAC's decision not to fund FRN 2703615 and direct USAC to restore funding to FRN 2532405.

Section 54.719(c) of the Commission's rules provides that any party seeking a waiver of Commission rules must seek relief directly from the Commission.² Accordingly, VIDOE hereby requests, in the alternative, that the Commission waive its rules and order USAC to take the action requested above.

The issue is whether the price of eligible services was the primary factor in VIDOE's decision to contract with Edline d/b/a Blackboard Engage ("Edline") for webhosting services. It was.

SUMMARY

In its RFP for webhosting services, VIDOE informed vendors that the cost of eligible services would receive a maximum of 30 points, making it the highest weighted factor in VIDOE's contracting decision. After receiving three proposals, VIDOE scored all of them, awarding a maximum of 30 points for the cost of eligible services. VIDOE stands by this assertion.

¹ See Exhibit A, USAC's Decisions on Appeal, and Exhibit B, VIDOE's Letter of Appeal to USAC.

² 47 C.F.R. § 54.719(c).

The crux of the problem is not what VIDOE did, but how VIDOE documented what it did. VIDOE's fatal mistake was combining the 30-point, eligible-services-cost category with the 15-point, ineligible-services-cost category on its evaluation form to create one, 40-point, cost category. This, according to USAC, made it impossible for it to determine whether the cost of the eligible services actually received the most points. USAC's real conclusion, therefore, was not that VIDOE failed to assign 30 points (the most points) to the cost of eligible services, but rather, that VIDOE's evidence was insufficient to prove it. We disagree.

There was more than enough evidence for USAC to conclude that VIDOE assigned points to cost exactly the way its RFP for webhosting services said it would: 30 points for eligible services and 15 points for ineligible services. If USAC had looked at the forest instead of focusing laser-like on a single tree -- if it had considered all of the evidence instead of fixating on just one piece of it -- the outcome would have been completely different. Every piece of evidence that supported the common sense, more logical, and indeed correct conclusion, USAC ignored.

What USAC should have concluded was that the points in the combined cost column reflected the instructions that VIDOE gave to the evaluation committee in its webhosting RFP, which was to (1) assign a maximum of 30 points to each proposal's eligible services and no more than 15 points to its ineligible services; (2) add up the points; and (3) report the total number of points earned for eligible and ineligible services in a single category labeled "Cost."

USAC made no mention, for example, of the eligible and ineligible services scoring information that VIDOE had included in its webhosting RFP. Whether this was an oversight or purposeful, we of course have no way of knowing. What we know for sure though is that by ignoring this compelling evidence, USAC freed itself from having to address an extremely important fact, one that supported a conclusion that was completely different from the one that USAC seemed intent on reaching.

USAC ignored other relevant evidence too, such as the fact that the amount of ineligible services in each bid was relatively insignificant, and thus extremely unlikely, as a practical matter, to merit any more than the 15-point maximum that VIDOE had assigned to it. Nor did USAC point out that the ineligible services were mostly unidentified bundled services, which the

vendors described simply in terms of a USAC-approved percentage of the total price, which was zero in one case, and 3% and 5%, respectively, in the other two. The other services reported as ineligible included a smattering of one-time, start-up-related fees and some fees for training. Both in terms of cost and consequence, the ineligible services were relatively trivial, which is one of many reasons why this matter is so frustrating.

Granted, the combined “cost” category raised a legitimate evidentiary concern. VIDOE does not dispute that and realizes now that it was a mistake to create its evaluation form that way. That said, an innocuous mistake like that one was never should have led to the loss of two years worth of badly needed E-rate funding.

FACTS

VIDOE applied for and, on October 7, 2013, received a FY 2013 funding commitment for webhosting services from Edline. So with its FY 2013 commitment in hand, VIDOE renewed its contract with Edline and, on March 26, 2014, applied again for webhosting services, this time for FY 2014. As USAC had already funded its FY 2013 webhosting contract with Edline, VIDOE had no reason even to suspect that there was anything “wrong” with it. Unfortunately, what VIDOE did not know at the time and could not possibly have predicted or even imagined was that USAC would eventually do the unthinkable – namely, pull the rug out from under two years worth of webhosting funding solely because of the way scoring for eligible and ineligible services had appeared on the webhosting proposal evaluation form for the original contract award.

In May 2014, two months after VIDOE had filed its FY 2014 webhosting application, USAC began a selective review of VIDOE’s FY 2013 E-rate applications. During the selective review, VIDOE provided the proposal evaluation form that it had used for webhosting services and all of its other procurement-related documents.

On September 22, 2014, USAC decided to rescind VIDOE’s FY 2013 webhosting funding commitment and, on September 24, 2014, decided to reject its follow-on request for FY 2014.³ This, USAC explained, was because VIDOE’s evaluation form for webhosting proposals had combined points for the cost of both eligible and ineligible services into one category. It was

³ Exhibit C, USAC’s Commitment Adjustment and Funding Commitment decisions.

totally irrelevant to USAC that the maximum number of points in the combined category was 45, reflecting exactly what the RFP had explained to vendors in terms of how their cost proposals would be scored – namely, 30 points for the cost of eligible services and 15 points for cost of ineligible services.

USAC does not dispute that 30 points for the cost of eligible services was more points than any other factor. The only real problem USAC had was with VIDOE's documentation. Because the two cost categories had been combined on the evaluation form, USAC could not be sure from the face of it how many points the VIDOE reviewers had assigned to the cost of eligible services. USAC did not look to any other evidence to help clarify the matter. Instead, USAC relied entirely on the minor ambiguity created by the combined cost column in the evaluation form to leap to the conclusion that VIDOE failed to assign more weight to the price of eligible services than to any other factor. For that reason alone, USAC rescinded funding for one FRN and refused to fund the other.

The Webhosting Services Procurement

On December 17, 2012, VIDOE posted a FCC Form 470 to the USAC website. Thus began VIDOE's webhosting services procurement process for FY 2013. The entire process was fair and open and followed the procurement rules required by both the Commission and the Virgin Islands. There is no allegation to the contrary. Furthermore, as dictated by the VIDOE RFP,⁴ both eligible and ineligible services, to the extent there were any, were evaluated independently before being considered in one overall score for cost.⁵

VIDOE received proposals from Sharp School, School in Sites, and Blackboard Engage.⁶ To evaluate them, VIDOE formed a six-person evaluation committee. The evaluation committee evaluated each proposal using the evaluation criteria set forth in the webhosting RFP: qualifications (25 points), responsiveness (15 points), experience (10 points), references (5 points), and cost (45 total points with 15 points for any ineligible costs and 30 points for the cost

⁴ Exhibit D, section from VIDOE's webhosting services RFP explaining how proposals would be scored and listing the total potential points possible in each category.

⁵ Exhibit E, proposal evaluation form prepared by VIDOE's webhosting proposal evaluation committee.

⁶ Exhibit F, the three proposals VIDOE received.

of the eligible goods and/or services).⁷

The RFP included further clarification to show how the point total would be reached. In the cost category, the cost of the eligible items was to account for 30 of the 45 points that could be awarded. The 30 points that VIDOE assigned to the cost of eligible goods and/or services was more points than VIDOE had assigned to any other criterion and five points higher than the next closest one. The evaluation form provided as part of the selective review response shows that VIDOE's evaluation committee evaluated and scored all three proposals in full accordance with the potential point totals listed in the RFP.

DISCUSSION

Providing a single score for cost on the proposal evaluation form, after independently scoring the eligible costs in the three proposals and the ineligible costs in the two proposals that included them, is not a competitive bidding violation. Here, the evaluation committee provided a cumulative score based on the scores of the ineligible and eligible products and services, which is exactly what the terms of the RFP required them to do. By applying the highest possible score to the cost of eligible products and services category, the evaluation committee followed the Commission's rules that apply to the scoring of competitive proposals.

USAC's problem with VIDOE's procurement is narrow, isolated and wrong. It stems from the fact that the evaluation committee's scoring sheet combined the cost of eligible and ineligible services into one category. Especially here, where there is strong evidence to the contrary, that fact does not lead automatically and inexorably to the conclusion that the evaluation committee did not evaluate the cost of ineligible and eligible services separately. Perhaps if VIDOE's RFP had not explained, explicitly, that the total points for the cost category would be 15 points for ineligible services plus 30 points for eligible services, maybe then, and only then, USAC's logic would have been supportable. It certainly was not in this instance. We cannot understand why USAC ignored such a critical piece of evidence. We continue to wonder why USAC found it impossible to conclude that VIDOE's reviewers did what the RFP instructed them to do and, moreover, what VIDOE certified to USAC they actually did. In matters like these, USAC cannot demand 100% certainty on a particular issue as precondition to

⁷ See Exhibit D, RFP's scoring instructions, and Exhibit E, the committee's proposal evaluation form.

funding. It has no authority to do that, and of course it would be wrong to impose on any applicant an impossible evidentiary standard such as that.

Here, USAC reached its conclusion by cherry picking the facts. When it saw that VIDOE's form only had one column on it for cost, it seized on that, and that was literally that. But what about the other relevant facts, the ones such as the evaluation information in the RFP, which firmly supported VIDOE's insistence that its reviewers had evaluated and scored the cost of eligible and ineligible services separately -- as the RFP had instructed them to do? Below are important facts, none of which USAC considered:

1. VIDOE's webhosting services RFP included a chart to inform vendors how VIDOE was going to evaluate their proposals.⁸ This explanation appeared on top of the chart:

The following chart outlines the evaluation criteria and weight allowances:

VIDOE's reviewers used this chart to guide them through the review process. This is how they knew what criteria to consider and how much weight to assign to each one. Below is the relevant excerpt from that chart, which speaks for itself:

5. COST	45
A.) Cost of Eligible Items and Implementing Solution	30
B.) Cost of Ineligible Items and Implementing Solution	15

2. Local procurement rules require each member of the VIDOE evaluation committee to evaluate the proposals received in response to VIDOE's RFP exactly as the RFP stated those proposals would be reviewed. Therefore, any member of the review committee who decided to evaluate the cost of eligible and ineligible services together and to assign only one score for both would have violated local procurement law. There is no evidence whatsoever, and absolutely no reason to believe, that any member of the committee decided to do that.
3. The three webhosting proposals were 100% eligible, 97% eligible, and 95% eligible,

⁸ See Exhibit D.

respectively. To the extent that there were other ineligible costs attached to the proposals, they were relatively small amounts and either for one-time fees or training. What this means and why it is important is that it shows how extraordinarily insignificant ineligible services were as a factor in this procurement. It would have made no sense, therefore, for the reviewers to assign more points to the cost of ineligible services than the 15 points that the RFP said they could. Moreover, it would have made even less sense, if that's possible, for the reviewers to place their jobs in jeopardy by deciding to alter the terms of the RFP themselves by assigning more than 15 points to costs that were of such little consequence.

What is clearly evident, when all the facts are considered, is that VIDOE did not violate any program rules by awarding its webhosting contract to Edline. It held a fair and open competitive bidding process. All bids it received were evaluated, and evaluated fairly. The evaluation committee evaluated eligible and ineligible items separately, before providing a cumulative score, as the RFP and local procurement rules required. Contrary to USAC's conclusion, the price of eligible services was the highest weighted factor in the evaluation. Therefore, USAC's decision should be reversed.

REQUEST FOR WAIVER

Alternatively, VIDOE respectfully requests that the Commission waive its rules and instruct USAC to fund VIDOE's request for webhosting services for FY 2013 and FY 2014.

The Commission may waive any provision of its rules on its own motion and for good cause shown.⁹ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹²

⁹ 447 C.F.R. §1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

¹² *Northeast Cellular*, 897 F.2d at 1166.


VIDOE serves a large population of students from impoverished families (note that every school in the VIDOE consortium application receives a 90% E-rate discount rate because of the poor economic conditions that are prevalent in the Virgin Islands). These students are the ones who the E-rate program is supposed to ensure do not get left behind. As the day-to-day steward of the E-rate program, USAC should not be punishing them for the way information wound up getting reported on a proposal evaluation form. For VIDOE, every single dollar is important, and of course funding for technology is critical.

Except for one mistake on its webhosting services evaluation form, which the record shows had very little significance so far as the overall procurement was concerned, VIDOE conducted its webhosting procurement in full compliance with the rules, both local and E-rate. There was no allegation that the procurement was anything but open and fair or that VIDOE knowingly violated any rule. And if in fact there was a rule violation, it was anything but clear-cut. Furthermore and insofar as equity is concerned, it is important to note that VIDOE renewed its contract with Edline and applied for FY 2014 webhosting funding after USAC had funded its identical FY 2013 request and before USAC began its selective review of VIDOE's FY 2013 applications. In these circumstances, deviation from the general rule would most certainly better serve the public interest. Therefore, waiver is appropriate.

CONCLUSION

For all of the reasons set forth and discussed above and in its USAC Letter of Appeal, VIDOE respectfully requests that the Commission reverse USAC's decision to deny funding for not using the cost of eligible goods and/or services as the highest weighed factor in the bid evaluation process and direct USAC to fully reinstate and fund Funding Requests 2532405 and 2703615. Alternatively, VIDOE respectfully requests that the Commission reach the same result by granting a waiver.

Respectfully submitted,



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EXHIBIT A

USAC's Decisions on Appeal



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2014-2015

January 28, 2015

Dr. Clinton Stapleton, Ph.D.
Virgin Islands Department of Education
1834 Kongens Gade
St Thomas, VI 00802

Re: Applicant Name: V.I. DEPARTMENT OF EDUCATION
Billed Entity Number: 154494
Form 471 Application Number: 990686
Funding Request Number(s): 2703615
Your Correspondence Dated: November 21, 2014

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2703615
Decision on Appeal: **Denied**
Explanation:

- FCC rules require that, in order to determine the most cost effective provider, that the price of the eligible goods and services must be weighted the most heavily in your bid evaluation. In your Request for Proposal, the cost component was a total of 45 points with separate points for cost of eligible items (30 points) and cost of ineligible items (15 points). However, during the bid evaluation process, you combined the scores of both eligible and ineligible products/services and evaluated as the overall cost. Since the price of the eligible goods and services alone was not weighted the greatest, you violated the competitive bidding rules of the Program. Because you included the cost of ineligible products and services in your evaluation of the price of each proposal, funding was denied. You have not demonstrated on appeal that USAC's determination was incorrect. Consequently, USAC denies your appeal.

- FCC rules require that applicants select the most cost-effective products and/or services offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. *See* 47 C.F.R. sec. 54.511(a); also, Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, et al., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, FCC 03-313 para. 50 (rel. Dec. 8, 2003). Ineligible products and services may not be factored into the cost-effective evaluation. *See* Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries, CC Docket No. 96-45, Public Notice, 13 FCC Rcd 16570, DA 98-1110 (rel. Jun. 11, 1998).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Verlyne Jolley
Funds for Learning
2575 Kelley Pointe Pkwy
Suite 200
Edmond, OK 73013

Billed Entity Number: 154494
Form 471 Application Number: 990686
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2013-2014

January 29, 2015

Dr. Clinton Stapleton, Ph.D.
Virgin Islands Department of Education
1834 Kongens Gade
St Thomas, VI 00802

Re: Applicant Name:	V.I. DEPARTMENT OF EDUCATION
Billed Entity Number:	154494
Form 471 Application Number:	927508
Funding Request Number(s):	2532405
Your Correspondence Dated:	November 21, 2014

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2013 Notification of Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2532405
Decision on Appeal: **Denied**
Explanation:

- After multiple requests for documentation and application review, USAC determined to rescind the funds approved on the above listed funding request in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the vendor selection documentation provided by the applicant. The applicant separated the scores of the cost between eligible and ineligible products and services. However, during the bid evaluation process, applicant combined the scores of both eligible and ineligible products/services and evaluated as the overall cost. Since the price of the eligible goods and services alone was not weighted the greatest, applicant violated the competitive bidding rules of the Program. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take

other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. You have not demonstrated on appeal that USAC's determination was incorrect. Consequently, USAC denies your appeal.

- FCC rules require that applicants select the most cost-effective products and/or services offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. *See* 47 C.F.R. sec. 54.511(a); also, Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., SLD Nos. 321479, et al., CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, FCC 03-313 para. 50 (rel. Dec. 8, 2003). Ineligible products and services may not be factored into the cost-effective evaluation. *See* Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries, CC Docket No. 96-45, Public Notice, 13 FCC Rcd 16570, DA 98-1110 (rel. Jun. 11, 1998).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Verlyne Jolley
Funds for Learning
2575 Kelley Point Parkway
Suite 200
Edmund, OK 73013

Billed Entity Number: 154494
Form 471 Application Number: 927508
Form 486 Application Number:

EXHIBIT B

VIDOE's Letter of Appeal to USAC

November 21, 2014

via e-mail: appeals@sl.universalservice.org

Letter of Appeal

Schools and Libraries Division – Correspondence Unit

30 Lanidex Plaza West

PO Box 685

Parsippany, NJ 07054-0685

**LETTER OF APPEAL
Edline Procurement Decision**

Applicant:	Virgin Islands Department of Education
Entity Number:	154494
Funding Year:	2013 and 2014
Form 471 Application #:	927508 and 990686
FRN Numbers:	2532405 and 2703615
USAC Decision:	September 22, 2014 (FY13 COMAD) September 24, 2014 (FY 14 FCDL)

On behalf of the Virgin Islands Department of Education ("VIDE"), the undersigned hereby appeals the decision of the Universal Service Administrative Company ("USAC") that the bid evaluation process failed to consider cost of the eligible goods as the highest weighted factor.

As a result of this incorrect assumption, VIDE has now received a Notification of Commitment Adjustment for the FY2013 funding request with Edline and was denied funding in 2014 for this same service as well.¹

¹ Copies of the Notification of Commitment Adjustment and the 2014 Funding Request Decision Letter are attached as Exhibit A.

FACTS AND DISCUSSION

In May 2014, VIDE received and responded to a Selective Review for Funding Year 2014. As part of the review, the bid evaluations for webhosting services with Edline were provided.² This service was put out for bid and procured for Funding Year 2013. After selecting Edline as the service provider, Edline and VIDE signed a one year contract with 2 voluntary one-year extensions and a request for service was included on the 2013 Form 471 Application #927508. As the 2014 Form 471 application was prepared, VIDE exercised one of the voluntary extensions and included this request on Form 471 Application # 990686.

When VIDOE conducted the bid evaluation process for FY2013, VIDOE conducted a fair and open bidding process, following the procurement guideline's set forth by the Universal Service Administrative Company (USAC) and the Virgin Islands. Furthermore, as dictated by the VIDOE request for proposal (RFP), both eligible and ineligible services were evaluated independently before being considered in one overall score for cost. Finally, cost of eligible service was the highest weighted and primary evaluating factor in the VIDOE's evaluation, and it memorialized and selected the most cost-effective solution.³

FCC Form 470 number 302930001077782 was posted to the USAC website and certified on December 17, 2012. This form opened the procurement for webhosting services for the VIDOE. In accordance with USAC guidance, VIDOE waited at least 28 days from that date before closing the competitive bidding process.

During the mandatory 28 day window, the VIDOE received three bids for webhosting services. The bids received were from Sharp School, School in Sites, and Blackboard.

² For ease of reference, see Exhibit B for copies of the bid evaluation information provided as part of the SRIR response.

³ See Exhibit C for a copy of the language from the RFP providing how bids would be scored and a list of the total potential points possible by category.

Upon completion of the mandatory 28 day window, the three bids were evaluated by six individuals (evaluation committee) within the VIDOE. The evaluation committee evaluated the bids using the evaluation criteria found in the RFP for this service: qualifications (25 points), responsiveness (15 points), experience (10 points), references (5 points), and cost (45 total points with 15 points for any ineligible costs and 30 points for the cost of the eligible goods and/or services). All the criteria areas, but references, were further clarified in the RFP to show how the point total would be reached. In the cost category, the cost of the eligible items accounted for 30 of the 45 points that could be awarded. In fact, the 30 possible points for cost of the eligible goods and/or services provided the potential for more points than any of the criteria listed in the RFP. This clearly demonstrates that cost of the eligible service was given the highest consideration and is in compliance with USAC rules. In addition, the overall evaluation sheets provided as part of the SRIR response, show that the bids received were evaluated and scored in compliance with the potential point totals listed in the RFP.

The evaluation committee, did evaluate both the eligible and ineligible costs associated with the services as outlined within the RFP. The Department based the overall cost score on the evaluations of these two separate items, giving the cost of eligible items the higher weight between the two.

Providing a singular, cumulative score on the vendor evaluation after independently scoring the ineligible and eligible costs is not a competitive bid violation in the current situation. Since the evaluation committee provided a cumulative score, based on the scores of the ineligible and eligible products and services, they abided by the terms presented in the RFP. By applying the highest possible score to the eligible products and services, the evaluation committee followed the bidding rules set forth by USAC. At no time during the procurement process did the VIDOE violate any local procurement or USAC rules.

When all the facts are clearly stated and considered, the Virgin Islands Department of Education is not in violation of any rules at the local or program level. It held a fair and open competitive bidding process. All bids received were evaluated. The evaluation committee evaluated eligible and ineligible items separately, before providing a cumulative score in accordance with local procurement guidelines and the respective RFP. Price of eligible services was the highest weighted factor in the evaluation.

ADMINISTRATIVE ACTION REQUESTED

The Virgin Islands Department of Education respectfully asks that the decision to deny funding for not using the cost of the eligible goods and/or services as the highest weighed factor in the bid evaluation process be reversed. Further, VIDE respectfully requests that Funding Requests 2532405 and 2703615 be fully reinstated for funding.

Respectfully Submitted,



Dr. Clinton Stapleton, Ph.D.

IT Director

Virgin Islands Department of Education

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Exhibit A

FY2013 the Notification of Commitment Adjustment
FY2014 Funding Request Decision Letter



Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2013: July 1, 2013 - June 30, 2014

September 22, 2014

Clinton Stapleton, Ph.D.
V.I. DEPARTMENT OF EDUCATION
1834 KONGENS GADE
ST THOMAS, VI 00802 6746

10/5/14

Re: Form 471 Application Number:	927508
Funding Year:	2013
Applicant's Form Identifier:	VI13-47101
Billed Entity Number:	154494
FCC Registration Number:	0013057278
SPIN:	143027282
Service Provider Name:	Edline, LLC
Service Provider Contact Person:	Kristian Gary

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see "Appeals" in the "Schools and Libraries" section of the USAC website.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Kristian Gary
Edline, LLC

Funding Commitment Adjustment Report for
Form 471 Application Number: 927508

Funding Request Number: 2532405
Services Ordered: INTERNET ACCESS
SPIN: 143027282
Service Provider Name: Edline, LLC
Contract Number: SFC-DOE-TERR-2013-011
Billing Account Number:
Site Identifier: 154494
Original Funding Commitment: \$36,987.30
Commitment Adjustment Amount: \$36,987.30
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

After multiple requests for documentation and application review, it has been determined that this funding commitment must be rescinded in full. The price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the vendor selection documentation provided by the applicant. The applicant separated the scores of the cost between eligible and ineligible products and services. However, during the bid evaluation process, applicant combined the scores of both eligible and ineligible products/services and evaluated as the overall cost. Since the price of the eligible goods and services alone was not weighted the greatest, applicant violated the competitive bidding rules of the Program. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor in the vendor selection process. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

USAC

Universal Service Administrative Company
Schools and Libraries Division
Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685



10/7/14

TIME SENSITIVE MATERIAL

00293
Clinton Stapleton, Ph.D.
V.I. DEPARTMENT OF EDUCATION
1834 KONGENS GADE
ST THOMAS, VI 00802-6746



Universal Service Administrative Company

Schools and Libraries Division



FUNDING COMMITMENT DECISION LETTER
(Funding Year 2014: 07/01/2014 - 06/30/2015)

September 24, 2014

Clinton Stapleton, Ph.D.
V.I. DEPARTMENT OF EDUCATION
1834 KONGENS GADE
ST THOMAS, VI 00802-6746

Re: FCC Form 471 Application Number: 990686
Billed Entity Number (BEN): 154494
Billed Entity FCC Registration Number (FCC RN): 0013057278
Applicant's Form Identifier: VI14-47101

Thank you for your Funding Year 2014 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the FCC Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$2,423,305.30 is "Approved."
- The amount, \$36,987.30 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Guide to USAC Letter Reports in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full.
- Review technology planning approval requirements.
- Review Children's Internet Protection Act (CIPA) requirements.
- File FCC Form 486.
- Invoice USAC using the FCC Form 474, Service Provider Invoice (SPI) Form, or FCC Form 472, Billed Entity Applicant Reimbursement (BEAR) Form, - as products and services are being delivered and billed.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl

2. State outright that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., FCDL) and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - FCC Form 471 Application Number 990686 and the Funding Request Number (FRN) or Numbers as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2014," AND
 - The exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

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30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

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OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to Disposal or Trade-in of Equipment posted in the Reference Area of our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.



FUNDING COMMITMENT REPORT
Billed Entity Name: V.I. DEPARTMENT OF EDUCATION
BEN: 154494
Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 990686
Funding Request Number: 2703613
Funding Status: Funded
Category of Service: Telecommunications Service
FCC Form 470 Application Number: 991600001174368
SPIN: 143025240
Service Provider Name: AT&T Mobility
Contract Number: MTM
Billing Account Number: 287004751669
Multiple Billing Account Numbers: Y
Service Start Date: 07/01/2014
Service End Date: 06/30/2015
Contract Award Date: N/A
Contract Expiration Date: N/A
Shared Worksheet Number: 1730706
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$41,294.40
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$41,294.40
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$37,164.96 - FRN approved as submitted

FCDL Date: 09/24/2014
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015
Consultant Name: Funds for Learning
Consultant Registration Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: V.I. DEPARTMENT OF EDUCATION
BEN: 154494
Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 990686
Funding Request Number: 2703614
Funding Status: Funded
Category of Service: Internet Access
FCC Form 470 Application Number: 991600001174368
SPIN: 143030495
Service Provider Name: Broadband VI, LLC
Contract Number: PC080DOE14
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2014
Service End Date: N/A
Contract Award Date: 03/26/2014
Contract Expiration Date: 06/30/2016
Shared Worksheet Number: 1730706
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$2,169,912.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$2,169,912.00
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$1,952,920.80 - FRN approved as submitted

FCDL Date: 09/24/2014
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015
Consultant Name: Funds for Learning
Consultant Registration Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: V.I. DEPARTMENT OF EDUCATION
BEN: 154494
Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 990686
Funding Request Number: 2703615
Funding Status: Not Funded
Category of Service: Internet Access
FCC Form 470 Application Number: 302930001077782
SPIN: 143027282
Service Provider Name: Edline, LLC
Contract Number: SFC-DOE-TERR-2013-011
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2014
Service End Date: N/A
Contract Award Date: 03/14/2013
Contract Expiration Date: 06/30/2015
Shared Worksheet Number: 1730706
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$41,097.00
Pre-discount Amount: \$41,097.00
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$0.00 - Cost Effectiveness
Funding Commitment Decision Explanation: FCC rules require that, in order to determine the most cost effective provider, that the price of the eligible goods and services must be weighted the most heavily in your bid evaluation. In your Request for Proposal, the cost component was a total of 45 points with separate points for cost of eligible items (30 points) and cost of ineligible items (15 points). However, during the bid evaluation process, you combined the scores of both eligible and ineligible products/services and evaluated as the overall cost. Since the price of the eligible goods and services alone was not weighted the greatest, you violated the competitive bidding rules of the Program. Because you included the cost of ineligible products and services in your evaluation of the price of each proposal, funding will be denied.

FCDL Date: 09/24/2014
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015
Consultant Name: Funds for Learning
Consultant Registration Number (CRN): 16024808
Consultant Employer: Funds for Learning

FUNDING COMMITMENT REPORT
Billed Entity Name: V.I. DEPARTMENT OF EDUCATION
BEN: 154494
Funding Year: 2014

Comment on RAL corrections: The applicant did not submit any RAL corrections.

FCC Form 471 Application Number: 990686
Funding Request Number: 2703639
Funding Status: Funded
Category of Service: Telecommunications Service
FCC Form 470 Application Number: 991600001174368
SPIN: 143002713
Service Provider Name: Virgin Islands Telephone Corporation
Contract Number: MTM
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2014
Service End Date: 06/30/2015
Contract Award Date: N/A
Contract Expiration Date: N/A
Shared Worksheet Number: 1730706
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$481,355.04
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$481,355.04
Discount Percentage Approved by the USAC: 90%
Funding Commitment Decision: \$433,219.54 - FRN approved; modified by SLD
Funding Commitment Decision Explanation: MR1: The FRN was modified from \$49,401.14 to \$45,068.43 to agree with the applicant documentation. <><><><> MR2: The amount of the funding request was changed from \$45,068.43 to \$40,112.92 to remove the ineligible product and services: Maintenance Charges \$3744.49, Equipment Lease \$922.75, Equipment/Labor Sales \$226.88, Cabling \$25.59, Non-Published Listing \$28.60, and Additional Listing \$7.20.

FCDL Date: 09/24/2014
Wave Number: 020
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2015
Consultant Name: Funds for Learning
Consultant Registration Number (CRN): 16024808
Consultant Employer: Funds for Learning

Exhibit B

Bid Evaluation Matrix

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

—0—



WEBHOSTING SERVICES EVALUATION MATRIX
Results of Evaluation Ratings by Evaluator and Vendor

WEBHOSTING EVALUATION																			
EVALUATORS	Sharp School						School in Sites						Blackboard Engage						
	Qualifications	Responsiveness	Experience	References	Cost	TOTAL	Qualifications	Responsiveness	Experience	References	Cost	TOTAL	Qualifications	Responsiveness	Experience	References	Cost	TOTAL	
Dr. Clinton Stapleton, IT Director	18.8	11.3	7.5	3.8	22.5	63.9	12.5	11.3	5	3.8	11.3	43.9	25	11.3	10	3.8	45	95.1	
Mr. Matt Hodge, Territorial Director, Property & Procurement	18.8	11.3	8.8	3.8	33.8	76.5	0	0	0	0	0	0	18.8	11.3	7.5	3.8	28.1	69.5	
Sharon Richardson, Director, Parent Involvement	18.8	15	8.8	5	39.4	87	15.6	15	7.5	5	33.8	76.9	21.9	15	10	5	45	96.9	
Dr. Everett Ryan, Technology Coordinator	18.8	13.1	10	4.4	33.8	80.1	18.8	14.3	10	5	38.3	86.4	25	15	10	4.4	45	99.4	
Mr. Vladimir Williams, IT Technology Technician	25	15	10	3.8	22.5	76.3	18.8	15	7.5	3.8	33.8	78.9	25	15	10	3.8	33.8	87.6	
Ms. Jeannine A. Bonelli, IT Program Manager	25	11.3	7.5	3.8	22.5	70.1	12.5	11.3	7.5	3.8	22.5	57.6	25	11.3	7.5	3.8	45	92.6	
TOTALS	125.2	77	52.6	24.6	174.5	453.9	78.2	66.9	37.5	21.4	139.7	343.7	140.7	78.9	55	24.6	241.9	541.1	

Exhibit C

RFP language regarding bid evaluation

Compliance: Proposers must comply with the Virgin Islands Department of Education's procurement process, federal and local requirements, as well as requirements as outlined in this RFP.

The following chart outlines the evaluation criteria and weight allowances:

RFP EVALUATION CRITERIA	
RFP No.: DOE-01-STT-2013	WEIGHT FACTOR
1. QUALIFICATIONS	25
A.) Current Business License and in Good Standing	5
B.) Staff Available	5
C.) Consultants	5
D.) Highly Knowledgeable about E-Rate Policies and Procedures	10
2. RESPONSIVENESS AND DEDICATION	15
A.) Accuracy & Quality of Documentation	5
B.) Quality of Written / Formal Presentation	5
C.) Availability of Quality Equipment and Services	5
3. EXPERIENCE	10
A.) Satisfactory Design of Similar Project	5
B.) Satisfactory Performance on Other Projects	5
4. REFERENCES	5
A.) Satisfactory Recommendations	5
5. COST	45
A.) Cost of Eligible Items and Implementing Solution	30
B.) Cost of Ineligible Items and Implementing Solution	15
TOTAL	100

V. CONTRACTUAL REQUIREMENTS

The selected provider will be required to enter into a *Contract for Professional Services* with VIDE. The contract shall be construed under the laws of the United States Virgin Islands. Any action or proceeding arising out of the contract shall be heard in the appropriate courts of the United States Virgin Islands. Any portion of the services including the entire contract may be terminated by VIDE at any time without cause upon agreed upon notice to the selected provider. When selected and before executing the contract, the selected provider must provide supporting documents, including:

1. Current Business License issued to the legal name of record of the entity by the Government of the Virgin Islands, Department of Licensing and Consumer Affairs; OR a current copy of business license issued by state, city or county in which the foreign corporation is operating.